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MAY 25 2004

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May 25, 2004

21 / 1065

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

Re: Finance Docket No. 34483, SMS Rail Service, Inc.-Petition for Declaratory Order

Dear Secretary Williams:

Enclosed for filing in the captioned proceeding please find an executed original and ten copies of the "Petition to Intervene and Statement of Position of Valero Refining Company - New Jersey."

We would appreciate it if your office would stamp the additional copy of the filing, also enclosed, to indicate receipt, and return the same to our messenger.

Thank you for your assistance.

Sincerely,

Donald G. Avery

An Attorney for Valero Refining
Company - New Jersey

Encl.

cc: Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



In the Matter of)
)
SMS RAIL SERVICE, INC.--)
PETITION FOR DECLARATORY ORDER)

Finance Docket No. 34483

211065

PETITION TO INTERVENE
AND STATEMENT OF POSITION
OF VALERO REFINING COMPANY - NEW JERSEY

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Public Record

Valero Refining Company - New Jersey ("Valero"), by its undersigned attorneys, hereby petitions for leave to intervene in these proceedings in accordance with 49 C.F.R. §1112.4 (2003), and pursuant to the order served May 12, 2004, which directed SMS Rail Service, Inc. ("SMS") to serve a copy thereof on Valero.

In support hereof, Valero states as follows:

1. Since 1998 Valero has owned and operated a large petroleum refinery in Paulsboro, NJ which currently receives rail switching service from SMS, and line haul rail service from both CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NS"), either directly or via their shared subsidiary, Conrail.

2. When Valero assumed ownership of the Paulsboro refinery, all railroad service at the facility, including switching service over the extensive trackage situated on the 970-acre plant site, was provided by Conrail. During 2000, however, Valero - in

order to obtain more responsive switching service – invited SMS to come in and take over responsibility from Conrail for providing such service on the Paulsboro property.

3. Since SMS began operations at Paulsboro, Valero has been extremely pleased with its service, and wishes such service to continue.

4. When Valero invited SMS to take Conrail's place at Paulsboro, it was a matter of indifference to Valero whether SMS would provide such service as a common carrier or as a private switching operator: the service to Valero would be the same in either case, as its terms and conditions, including rates, would be governed by contracts. However, Valero was aware when it invited SMS in that SMS would also be asked to serve other, unaffiliated shippers, and Valero is aware that SMS has in fact provided service for such other shippers since it began operations at Paulsboro.

5. Valero remains indifferent to whether SMS is or is not a common carrier today, and therefore takes no position regarding the merits of SMS's dispute with NS over SMS's status.

Respectfully submitted,

VALERO REFINING COMPANY - NEW
JERSEY

By: Andrea M. Decker
Associate Counsel
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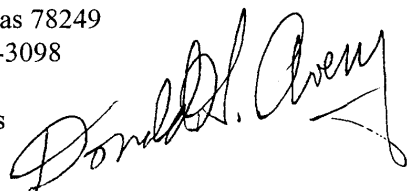
Of Counsel:

Slover & Loftus
1224 17th Street NW
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Dated: May 25, 2004

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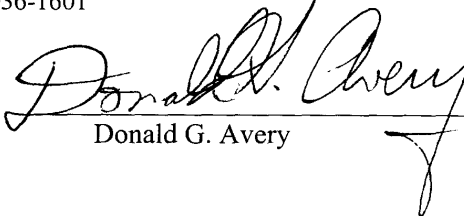
A handwritten signature in dark ink, appearing to read "Donald G. Avery", is written over the printed name and address of Donald G. Avery.

Certificate of Service

I hereby certify that I have, this 25th day of May, 2004, caused copies of the foregoing "Petition to Intervene and Statement of Position of Valero Refining Company - New Jersey" to be served upon all parties of record in the captioned proceeding, in accordance with the Board's Rules of Practice, addressed as follows:

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Donald G. Avery